

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

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| IN RE: Bair Hugger Forced Air Warming Products Liability Litigation | MDL No. 15-2666 (JNE/FLN) |
| This Document Relates: | |
| PLAINTIFF(S) | |
| 18-cv-00348 (Dorothy Smith v. 3M Co., et al.) | |

RESPONSE IN OPPOSITION TO DEFENDANT’S MOTION TO DISMISS

NOW COMES Plaintiff, Dorothy Smith, identified in Defendants’ Motion to Dismiss for Failure to Comply with Pretrial Order No. 14 [Dkt. 1572], and by and through undersigned counsel submits this, her Response to Defendants’ Motion to Dismiss, and would respectively show the Court the following: Defendants have asked the Court to dismiss this action with prejudice for failure to comply with the Court’s Pretrial Order No. 14 (“PTO 14”), which requires a plaintiff to serve a completed and signed Plaintiff Fact Sheet (“PFS”), medical authorization, and supporting documents.

FACTS

Defendant’s Memorandum listed Plaintiff as having remaining core deficiencies and noted its third final deficiency letter was sent on 7/16/2018. Plaintiff submitted a response in an attempt to address the deficiencies on 8/10/2018. See Declaration of Tayjes Shah, Esq. filed concurrently with this response. On 10/10/2018, Defendant notified Plaintiff counsel that it considered Plaintiff to still have outstanding core deficiencies but did not

specify what they considered deficient. Id. On 10/18/2018, Plaintiff counsel inquired as to what core deficiencies Defendant claims to remain outstanding. Defendant responded on 10/23/ 2018 describing five issues. Id. Plaintiff made efforts to address each of the five claimed deficiencies and submitted an amended PFS submission on the same day as being served with the instant Motion on 11/1/2018.

PLAINTIFF’S ACTION SHOULD NOT BE DISMISSED WITH PREJUDICE

In light of Plaintiff’s cooperation and compliance with discovery obligations and attempts to address claimed core deficiencies, the case should not be dismissed subject to PTO 14. Further, the deficiencies claimed by defense are not grounds for dismissal. Alternatively, if the Court finds that Plaintiff has remaining outstanding deficiencies that need to be addressed, Plaintiff requests an additional 30 days to cure.

Dated: 11/8/2018

Respectfully submitted,

s/Tayjes Shah

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CERTIFICATE OF SERVICE

This is to certify that on November 8, 2018 a copy of the foregoing document was served on all parties via the Court’s electronic filing system.

Respectfully submitted,

s/Tayjes Shah

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